IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.398 of 2006
Date of decision:18.10.2006

The Punjab State Cooperative Agricultural Development Bank Limited, Chandigarh

....Petitioner

versus

Commissioner of Income Tax-I and another

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. M.L.Garg, Advocate, for the petitioner.

Mr. SK Garg Narwana, Advocate for the respodnents.

JUDGMENT:

1. This writ petition seeks quashing of notice dated 31.3.2005, Annexure P.2 issued under section 148 of the Income Tax Act, 1961 (for short, 'the Act') and notice dated 19.12.2005, Anneuxre P.7 for further proceedings.

2. Case of the petitioner is that it is engaged in the business of banking and its entire income was exempt from tax under section 80P(2)(a)(i) of the Act. The petitioner was being allowed exemption from tax for about 40 years. For the assessment year 1999-2000, the petitioner filed return under section 139(1) of the Act, claiming that its entire income was exempt under section 80P(2)(a)(i) of the Act. The return was accepted under section 143(1) of the Act and refund was also issued. Thereafter, on 31.3.2005, impugned notice for re-opening assessment was issued. Reasons therefor were also supplied vide letter dated 7.11.2005, Annexure P.5. In the said letter, it was mentioned that during the course of assessment proceedings for the assessment year 2002-03, it came to light that claim of the assessee for deduction under section 80P(2)(a)(i) of the Act was erroneous as the assessee was not registered under the Banking Regulation

Act, 1949 and was not having any banking licence from the RBI. It was also not a member of clearing house and did not provide cheque book facilities to the public. In the judgment of the Hon'ble Supreme Court in **UP Cooperative Cane Union Federation Limited v. CIT,** (1999) 237 ITR 574, it was held that exemption under Section 80P(2)(a)(i) of the Act was not available to societies providing facilities to non-members. It was also pointed that exemption under the head of GPF Fund, Additional Provident Fund, loans, bonus, staff security, leave, salary, interest of Call Deposits, Reserved Fund etc. were wrongly allowed. The petitioner filed objections which were rejected and notice Annexure P.7 was given.

3. Learned counsel for the assessee submitted that re-assessment under sections 147/148 of the Act was permissible only if the assessing officer had "reasons to believe" that income had escaped assessment, which did not mean mere change of opinion and jurisdiction to re-assess could not be invoked except on existence of statutory conditions permitting such a course. Reliance has been placed on judgments of the Hon'ble Supreme Court in **Commissioner of Income Tax and another v. Foramer France,** (2003) 264 ITR 566 and judgment of Delhi High Court in **Commissioner of Income Tax v. Kelvinator of India Limited,** (2002) 256 ITR 1.

4. Reply has been filed justifying re-opening of assessment and the reason given for invoking jurisdiction to re-assess, inter-alia, on the ground that guideline No.10 of 2003 issued by the Central Board of Direct Taxes (CBDT) on 26.9.2003 (Annexure R-1) was that all cases of Public Sector Undertakings and Banks shall fall under compulsory scrutiny for the assessment year 2002-03. It was for this reason that during the said year, the assessing officer applied his mind and found that certain deductions were wrongly allowed and on that basis, the assessing officer decided to re-open the case for the year 1999-2000. Objections of the petitioner on merits could be gone into during the assessment.

5. We have heard learned counsel for the parties and perused the record.

6. The expression "reason to believe" has been subject matter of judicial interpretation. Upto March 31, 1989 with effect from which date Section 147 of the Act has been amended, satisfaction that the income had escaped was required either on account of omission or failure of the

assessee to make the return or disclose material facts or on account of availability of information with the assessing officer. It was held that the assessing officer must hold a belief on account of existence of reasons and the reasons should not be irrational or arbitrary or a purely subjective satisfaction or merely a pretence. Reference may be made to judgments of the Hon'ble Supreme Court in **Calcutta Discount Co. Limited v. ITO** (1961) 41 ITR 191 and **Ganga Saran and Sons P. Limited v. ITO,** (1981) 130 ITR 1.

6.1 After April 1, 1989, power to reopen assessment is much wider. Still, mere change of opinion was not enough for invoking provisions of Section 147 of the Act. In the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the assessee, the appeal of the revenue against the judgment of the Allahabad High Court in **Foramer v. CIT,** (2001) 247 ITR 436 was dismissed without any discussion. However, in Full Bench judgment of the Delhi High Court in **Bawa Abhai Singh v. Deputy Commissioner of Income Tax,** (2002) 253 ITR 83, it was held that mere change of opinion was not enough for invoking Section 147 of the Act. Referring to legislative history of the provision and Circular No.549 dated 31.10.1989 ((1990) 182 ITR(ST) 1 at page 28), it was noticed that on account of scheme adopted by Amending Act 1987, returns will be accepted as such and passing of assessment orders will not be necessary unless a case is picked up for scrutiny and on account of this situation, Section 147 of the Act had to be amended. However, the view of Gujarat High Court in **Praful Chunilal Patel v. Makwana (M.J.), CIT (Asst.)** (1999) 236 ITR 832, to the effect that where no assessment was earlier made, the assessing officer could not be attributed application of any mind, was dissented from on the ground that under the scheme of the Act, the assessing officer could not review his own order and power of rectification could be exercised only within the scope of Section 154 of the Act. The assessing officer could not indirectly exercise power of review. It was further observed that if "reason to believe" for the Assessing Officer is founded on any information which may have been received after completion of assessment,it may be sound foundation of exercising power under section 147 of the Act. It was observed:-

"It is a well settled principle of interpretation of statute

> that the entire statute should be read as a whole and the same has to be considered thereafter chapter by chapter and then section by section and ultimately word by word. It is not in dispute that the Assessing Officer does not have any jurisdiction to review his own order. His jurisdiction is confined only to rectification of mistakes as contained in Section 154 of the Act. The power of rectification of mistake conferred upon the Income Tax Officer is circumscribed by the provisions of Section 154 of the Act. The said power can be exercised when the mistake is apparent. Even a mistake cannot be rectified where it may be a mere possible view or where the issues are debatable. Even the Income Tax Appellate Tribunal has limited jurisdiction under section 254(2) of the Act. Thus, when the Assessing Officer or Tribunal has considered the matter in detail and the view taken is a possible view the order cannot be changed by way of exercising the jurisdiction of rectification of mistake.
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> It is a well settled principle of law that what cannot be done directly cannot be done indirectly. If the Income Tax Officer does not possess the power of review, he cannot be permitted to achieve the said object by taking recourse to initiating a proceeding of reassessment or by way of rectification of mistake. In a case of this nature, the Revenue is not without remedy. Section 263 of the Act empowers the Commissioner to review an order which is prejudicial to the Revenue."

The matter has also been considered by this Court in **Swaraj Engine Limited v. Assistant Commissioner of Income Tax and another,** (2003) 260 ITR 202, wherein, it was observed:-

> "An Income tax Officer acquires jurisdiction to reopen an assessment under section 147(a) read with section 148 of the Income Tax Act, 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by a reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for each assessment during the concluded assessment proceedings, any part of its income, profits or gains chargeable to income tax had escaped assessment, he may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed comes into his possession which tends to expose the untruthfulness of those facts."

7. Coming to the present case, the notice for reassessment is not based merely on change of opinion but also on subsequent judgment of the Hon'ble Supreme Court in **UP Cooperative's** case (supra)

8. In view of the above, we are unable to hold that there was no material justifying invoking of jurisdiction under section 147 of the Act.

9. The writ petition is dismissed.

(Adarsh Kumar Goel)
Judge

October 18, 2006
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(Rajesh Bindal)
Judge